

1 Rajan O. Dhungana
 2 NV Bar# 13102
 3 FEDERAL PRACTICE GROUP
 4 7320 S. Rainbow Blvd., Ste. 102-360
 5 Las Vegas, NV 89139
 6 O: 714.491.8188
 7 rdhungana@fedpractice.com

8 *Designated Resident Nevada Counsel for Plaintiff Kirstin Blaise Lobato*

9 Elizabeth Wang*
 10 Loevy & Loevy
 11 2060 Broadway, Ste. 460
 12 Boulder, CO 80302
 13 O: 720.328.5642
 14 elizabethw@loevy.com

15 David B. Owens*
 16 Megan Pierce*
 17 Loevy & Loevy
 18 311 N. Aberdeen St., 3rd Fl.
 19 Chicago, IL 60607
 20 O: 312.243.5900
 21 megan@loevy.com
 22 *Admitted *pro hac vice*
 23 *Counsel for Plaintiff Kirstin Blaise Lobato*

14 **UNITED STATES DISTRICT COURT**
 15 **DISTRICT OF NEVADA**

16 KIRSTIN BLAISE LOBATO,

17 Plaintiff,

18 v.

19 LAS VEGAS METROPOLITAN POLICE
 20 DEPARTMENT, NEVADA, THOMAS
 21 THOWSEN, and JAMES LAROCHELLE,

22 Defendants.

1 Case No. 2:19-cv-01273-RFB-EJY

1 PLAINTIFF'S MOTION FOR
 2 INTEREST

23 Now comes Plaintiff, Kirstin Blaise Lobato, through counsel, and upon the
 24 accompanying memorandum of law, hereby move this Court pursuant to Federal Rule of Civil
 25 Procedure 59(e), to alter or amend its judgment to include (1) prejudgment interest on the
 26 damages awarded by the jury and (2) post-judgment interest.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

3 Filed in 2019, this suit involves the wrongful conviction of Kirstin Blaise Lobato, who
4 spent almost 24 years suffering as a result of being wrongfully arrested and imprisoned for a
5 murder she did not commit. This ordeal, the jury recognized, was a result of the misconduct of
6 Defendants Thomas Thowsen and James LaRochelle pursuant to their employment with the
7 Las Vegas Metropolitan Police Department. As the evidence showed at trial, Defendants'
8 actions robbed Lobato of her prime years and caused her immeasurable harm. Lobato's claims
9 accrued in 2017, after her exoneration. Yet, Defendants in this action failed to compensate her
10 then or admit their acts. Instead, through the past five and-a-half years of litigation, they forced
11 Lobato to go through the arduous process of trial, even seeking to dismiss her meritorious
12 claims four separate times. At trial, the jury calculated compensatory damages Defendants
13 owed to Lobato at \$34 million dollars. Plaintiff is entitled to both pre- and post-judgment
14 interest and respectfully requests such relief.

RELEVANT BACKGROUND

16 On July 8, 2001, the body of Duran Bailey was discovered in Las Vegas, Nevada.
17 Detectives Thowsen and LaRochelle were assigned to investigate the homicide. Nearly two
18 weeks later, on July 20, 2001, they found their way to Plaintiff, then 18 years old and at home
19 in Panaca, Nevada. The individual defendants arrested Plaintiff that same day and drove her
20 back to Las Vegas where they detained her at the Clark County Detention Center.

21 Lobato was tried (and wrongfully convicted) in May 2002. Lobato appealed her
22 conviction, and the Nevada Supreme Court reversed. *Lobato v. State*, 96 P.3d 765 (Nev. 2004).
23 Lobato was retried in September 2006 and wrongfully convicted a second time in October
24 2006, but the (wrongful) conviction was affirmed on appeal. *Lobato v. State*, 281 P.3d 1196
25 (Nev. 2009). Following another appellate order, *Lobato v. State*, 385 P.3d 618 (Nev. 2016),

1 and an evidentiary hearing, on December 19, 2017, the state court again vacated the conviction
 2 and Lobato was released on January 2, 2018. Lobato's claims in this suit accrued at that time.
 3 *McDonough v. Smith*, 139 S. Ct. 2149 (2019).

4 On July 23, 2019, Lobato commenced this action. Dkt. 1. Rather than admit their
 5 misconduct, Defendants sought to dismiss this action by moving to dismiss the complaint. Dkt.
 6 24. Defendants sought dismissal again in seeking summary judgment, which was denied. 67.
 7 Defendants sought to dismiss this action a third time, by appealing the Court's order denying
 8 summary judgment to the Ninth Circuit Court of Appeals. Dkt. 89. After years of prolonged
 9 litigation, Lobato's case finally went to trial on December 2, 2024. *See* Dkt. 171. Even then,
 10 Defendants still sought dismissal (though on a very limited basis) via an oral Rule 50 motion
 11 during the trial.

12 On December 12, 2024, a unanimous jury awarded Lobato \$34 million in damages.
 13 Dkt. 190. Specifically, the jury found in favor of Lobato on all claims and awarded
 14 compensatory damages in the amount of \$34,000,000, and punitive damages against
 15 Defendants Thowsen and LaRochelle in the amount of \$10,000 each. *Id.*
 16 On January 21, 2025, the court entered an order granting parties' stipulations that judgment
 17 would be entered on or after January 2, 2025, and that post-judgment interest shall begin
 18 accruing as of January 2, 2025. Dkt. 211. Judgment was entered January 6, 2025. Dkt 207.
 19 Plaintiff now seeks both pre- and post-judgment interest on her compensatory damages.

20 DISCUSSION

21 A. This Court Should Award Pre-Judgment Interest Pursuant to Rule 59(e).

22 A request for prejudgment judgment may be brought under a motion to alter or amend a
 23 judgment, as prejudgment interest traditionally has been considered part of the compensation
 24 due to a plaintiff. *See* FED. R. CIV. P. 59(e) ("A motion to alter or amend a judgment must be
 25 filed no later than 28 days after the entry of the judgment."); *S. Cal. Edison Co. v. Orange*
 26

1 *Cnty. Transp. Auth.*, 96 F.4th 1099, 1111 (9th Cir. 2024) (citing *Osterneck v. Ernst & Whinney*,
 2 489 U.S. 169, 177 (1989) (explaining that a “postjudgment motion for discretionary
 3 prejudgment interest is a Rule 59(e) motion”)).

4 Therefore, pursuant to these Rule 59(e), Plaintiff requests that the Court enter an
 5 amended judgment as set forth herein.

6 **1. Plaintiff Is Entitled to Prejudgment Interest on Her Compensatory Damages
 7 Verdict.**

8 To fully compensate Plaintiff for her injuries, this Court should provide Plaintiff with
 9 prejudgment interest on her \$34 million in compensatory damages from the date of the injury
 10 until judgment. *See generally Western Pacific Fisheries, Inc., v. S.S. President Grant*, 730 F.2d
 11 1280, 1288 (9th Cir. 1984).

12 Prejudgment interest “under federal law is a matter left to the sound discretion of the
 13 trial court.” *Purcell v. United States*, 1 F.3d 932, 942-43 (9th Cir. 1993) (citations omitted);
 14 *Barnard v. Theobald*, 721 F.3d 1069, 1078 (9th Cir. 2013) (internal quotation marks and
 15 citation omitted). Prejudgment interest awards “are governed by considerations of fairness and
 16 are awarded when it is necessary to make the wronged party whole.” *Id.* at 943 (citation
 17 omitted). “Prejudgment interest is a measure that ‘serves to compensate for the loss of use of
 18 money due as damages from the time the claim accrues until judgment is entered, thereby
 19 achieving full compensation for the injury those damages are intended to redress.’” *Schneider*
 20 *v. County of San Diego*, 285 F.3d 784, 789 (9th Cir. 2002) (quoting *West Virginia v. United*
 21 *States*, 479 U.S. 305, 311 n.2 (1987)).

22 Though not mandatory, courts are reluctant not to order it, as the refusal to award
 23 prejudgment interest would result in a windfall for the defendant and could create a perverse
 24 incentive to prolong litigation. *See General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 654-
 25 55, n. 10, 657 (1983). Accordingly, “prejudgment interest should ordinarily be awarded absent
 26 some justification for withholding such an award.” *Id.*; *Kansas v. Colorado*, 533 U.S. 1, 10

1 (2001) (award prejudgment interest and noting that the Supreme Court cases “since 1933 have
 2 consistently acknowledged that a monetary award does not fully compensate for an injury
 3 unless it includes an interest component.”).

4 Prejudgment interest is an element of compensation, not a penalty. *Barnard v.*
 5 *Theobald*, 721 F.3d 1069, 1078 (9th Cir. 2013). And prejudgment interest is available for both
 6 economic and noneconomic damages. *Id.*; *see Murphy v. City of Elko*, 976 F. Supp. 1359, 1364
 7 (D. Nev. 1997) (holding the prejudgment interest should run on her entire award because her
 8 damages for pain and suffering were just as “real and just as much an injury as her loss of
 9 earning.”); *Wooten v. BNSF Ry. Co.*, 387 F. Supp. 3d 1078, 1090 (D. Mont. 2019);
 10 *Gorelangton v. City of Reno*, 638 F. Supp. 1426, 1433 (D.Nev.1986) (prejudgment interest
 11 awarded on § 1983 claims for unliquidated claims of false arrest and wrongful death); *Farmers*
 12 *Home Mut. Ins. Co. v. Fiscus*, 102 Nev. 371, 375, 725 P.2d 234, 236 (1986) (Affirming an
 13 award of prejudgment interest on award to insureds for anxiety, worry, mental, and emotional
 14 distress).

15 Here, the Court should award Lobato prejudgment interest on her jury award so that she
 16 is fully compensated. Her jury award did not include prejudgment interest, nor would any
 17 ordinary juror assume an award of damages was also an award for interest. *See e.g., Gierlinger*
 18 *v. Gleason*, 160 F.3d 858, 874-75 (2d Cir. 1998). There is no evidence in the record suggesting
 19 parties contemplated the jury award including prejudgment interest, nor is there evidence the
 20 jury took prejudgment interest into account when deciding what to award in damages, as it was
 21 never mentioned to them. Absent evidence of such evidence, the Court should award
 22 prejudgment interest. *See e.g., Gierlinger*, 160 F.3d at 874-75. Furthermore, failing to award
 23 prejudgment interest would create a windfall for defendants and a perverse incentive for
 24 defendants in future cases to prolong litigation. *See generally General Motors Corp. v. Devex*
 25 *Corp.*, 461 U.S. 648, 654-55, n. 10, 657 (1983).

26

1

2 **2. The Court Should Apply the Statutory Post-Judgment Interest Rate Governed by**
28 U.S.C. § 1961 to Lobato's Prejudgment Interest.

3 “Generally, the interest rate prescribed for post-judgment interest under 28 U.S.C. §
 4 1961 is appropriate for fixing the rate of pre-judgment interest.” *Van Asdale v. Int'l Game*
 5 *Tech.*, 763 F.3d 1089, 1093 (9th Cir. 2014) (quoting *Blankenship v. Liberty Life Assur. Co. of*
 6 *Bos.*, 486 F.3d 620, 628 (9th Cir. 2007)). Thus, “prejudgment interest is often calculated at the
 7 same rate as postjudgment interest.” *Id.* But the court retains the discretion to depart from this
 8 rate if it finds, based on substantial evidence, that the equities of the case necessitate the
 9 application of a different rate. *Western Pac. Fisheries, Inc. v. SS President Grant*, 730 F.2d
 10 1280, 1289 (9th Cir. 1984); *see, e.g.*, *Blankenship*, 486 F.3d at 628 (awarding 10% in an
 11 ERISA case because it was the rate he would have earned in his mutual fund over that period);
 12 *see also Golden State Transit Corp. v. City of Los Angeles*, 773 F. Supp. 204 (C.D. Cal. 1991)
 13 (using 28 U.S.C. § 1961 as a starting point, but deviating from it due to the long length of the
 14 period interest would be awarded over and instead awarding the 52-week Treasury bill rate,
 15 compounded annually, using an annual average (January to December) of the monthly rates).

16 Under § 1961, the post-judgment interest rate is based on the weekly average 1-year
 17 constant maturity Treasury yield, as published by the Board of Governors of the Federal
 18 Reserve System, for the calendar week preceding the date of judgment. 28 U.S.C. § 1961(a).
 19 Interest is computed daily until payment is made and “compounded annually.” *Id.* § 1961(b).
 20 As discussed below, this rate is 4.17%. Here, the court should award prejudgment interest, as a
 21 component of compensatory damages, based on the interest rate laid out in § 1961. *See*
 22 *Saavedra v. Korean Air Lines Co.*, 93 F.3d 547, 555 (9th Cir. 1996) (“As we have previously
 23 used § 1961(a) as a yardstick for prejudgment interest, we would be remiss to hold that the
 24 district court abused its discretion in following the dictates of § 1961(a)’’); *see also Kaiser*

1 *Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827 (1990) (“The language of [28 U.S.C. §
 2 1961] directs that a single applicable rate of interest be applied to the judgment.”).

3 **B. Plaintiff is also Entitled to Post-Judgment Interest.**

4 Under 28 U.S.C. § 1961, the award of post-judgment interest is mandatory.

5 See *Barnard v. Theobald*, 721 F.3d 1069, 1078 (9th Cir. 2013) (citations omitted). As the
 6 Ninth Circuit has emphasized, “failure to award post-judgment interest would create an
 7 incentive for defendants to exploit the time value of money by frivolously appealing or
 8 otherwise delaying payment.” *Air Separation Inc. v. Underwriters at Lloyd's of London*, 45
 9 F.3d 288, 289–90 (9th Cir. 1995).

10 Though a Rule 59 motion on this issue is technically unnecessary, pursuant to § 1961,
 11 Plaintiff is entitled to post-judgment interest, which should be calculated “at a rate equal to the
 12 weekly average 1-year constant maturity Treasury yield, as published by the Board of
 13 Governors of the Federal Reserve System, for the calendar week preceding the date of the
 14 judgment.” 28 U.S.C. § 1961 (a); *see also* Dkt. 207 (judgment entered on January 6, 2025).

15 For the week ending January 3, 2025, the weekly average 1-year constant maturity
 16 Treasury yield rate was 4.17%, the § 1961 rate was *See* Board of Governors of the Federal
 17 Reserve System Daily Update, <http://www.federalreserve.gov/releases/H15/>. Plaintiffs
 18 respectfully request that this rate (4.17%) be applied to the total judgment amount from
 19 January 6, 2025, until the judgment is paid in full. *See* Dkt. 207.

20 **CONCLUSION**

21 WHEREFORE, Plaintiff respectfully requests that this Court grant Plaintiff’s motion
 22 for pre- and post-judgment interest.

23 DATED this 3rd day of February, 2025.

24 Respectfully submitted,

25 **KIRSTIN BLAISE LOBATO**

1 By: /s/ David B. Owens
2 *One of Plaintiff's Attorneys*

3 Rajan O. Dhungana
4 NV Bar# 13102
5 FEDERAL PRACTICE GROUP
6 7320 S. Rainbow Blvd., Ste. 102-360
7 Las Vegas, NV 89139
8 rdhungana@fedpractice.com
9 O: 714.491.8188
10 *Designated Resident Nevada Counsel for*
11 *Plaintiff Kirstin Blaise Lobato*

12 David B. Owens *
13 Megan Pierce*
14 Loevy & Loevy
15 311 North Aberdeen St., 3rd Floor
16 Chicago, IL 60607
17 T: (312) 243-5900
18 F: (312) 243-5902
19 david@loevy.com
20 *Admitted *pro hac vice*

21 Elizabeth Wang*
22 Loevy & Loevy
23 2060 Broadway, Ste. 460
24 Boulder, CO 80302
25 T: (312) 243-5900
26 F: (312) 243-5902
elizabethw@loevy.com
*Admitted *pro hac vice*
Counsel for Plaintiff Kirstin Blaise Lobato

14
15 **CERTIFICATE OF SERVICE**

16 I, David B. Owens, an attorney, hereby certify that on February 3, 2025, I filed the
17 foregoing document via CM/ECF, which was electronically delivered to all counsel of record.

18 /s/ David B. Owens
19 *One of Plaintiff's Attorneys*